

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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RENDELL ROBINSON,

Plaintiff,

v.

9:13-cv-1213  
(TJM/TWD)

LORENZO A. BALLARD, et al.,

Defendants.

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**Thomas J. McAvoy, SR. U.S.D.J.**

**DECISION and ORDER**

The Court referred this action alleging excessive force by prison officers, brought pursuant to 42 U.S.C. § 1983, to the Hon. Thérèse Wiley Dancks, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. Plaintiff alleges that the Defendants are liable to him for excessive force and failing to intervene during an incident at the Marcy Correctional Facility on July 14, 2010. The Report-Recommendation, dated February 3, 2017, found that Defendants' motion for summary judgment should be granted in part and denied in part.

Neither side filed objections to the Report-Recommendation and the time for filing such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

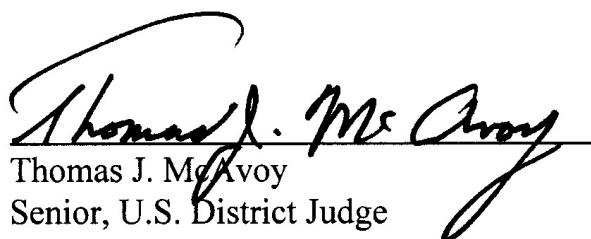
Accordingly:

The Report-Recommendation, dkt. # 65, is hereby ADOPTED. The Defendants' motion for summary judgment, dkt. # 51, is hereby GRANTED IN PART and DENIED IN PART, as follows:

1. The motion is GRANTED with respect to Defendants McArdle, Corey, and Kalies;
2. The motion is DENIED WITHOUT PREJUDICE as to the defense of qualified immunity of Defendants Hilton, Bellnier and Harper; and
3. The motion is DENIED in all other respects.

**IT IS SO ORDERED**

Dated: March 10, 2017



Thomas J. McAvoy  
Senior, U.S. District Judge